

Press and Information Division

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Opinion of the Advocate General in Case C-304/02

Commission of the European Communities v French Republic

**ADVOCATE GENERAL GEELHOED PROPOSES THAT, FOR THE FIRST TIME,
THE COURT IMPOSE A LUMP SUM FINE ON A MEMBER STATE FOR A
PERSISTENT AND STRUCTURAL INFRINGEMENT OF COMMUNITY LAW**

The Advocate General suggests a lump sum fine of EUR 115.5m be imposed on France for failing to comply with fishery enforcement obligations over a number of years and that France be required to pay nearly EUR 58m for every further six months that it fails to comply.

In 1991 the Court, at the request of the Commission, found that between 1984 and 1987 France had infringed Community law by failing to carry out controls aimed at ensuring compliance with Community fisheries conservation measures¹. In particular the Court found that France had failed to enforce controls in relation to minimum mesh sizes of nets, attachments to nets, by-catches, and the minimum size of fish permitted to be sold. Moreover the Court found that France had failed to take action against those found to be in breach of the relevant Community provisions.

For the following eleven years the Commission entered into a protracted dialogue with France as to the efforts being made to enforce the Community rules. However, following numerous inspections carried out by Community inspectors in various French ports during this time, the Commission remained unconvinced that France had fully complied with its obligations. The Commission therefore has asked the Court to declare that France has failed to comply with the Court judgment of 1991 and to order France to pay EUR 316,500 per day of delay in implementing that judgment from the date of delivery of the present judgment.

¹ Case C-64/88 Commission v French Republic [1991] ECR I-2727.

The Advocate General distinguishes between two points in time for determining whether France has complied with the 1991 judgment. Firstly, between 1991 and 2000, when the time-limit for compliance with the Commission's reasoned opinion expired, and secondly, the current situation so as to determine whether France is liable to pay a daily penalty until it complies.

In relation to the **first period of time**, between 1991 and 2000, the Advocate General notes that France has taken various measures aimed at improving the monitoring of compliance with the Community rules. However, such measures can only be regarded as effective if they result in a practical situation which corresponds to that envisaged by those rules). The reports produced by the Community inspectors contain numerous and repeated indications of France's failure to monitor compliance in an efficient and effective manner and show that the enforcement efforts made by France to prosecute offenders were not effective. These reports, in his opinion, testify to a structural situation which has lasted for many years and still existed at the end of the time limit laid down in the reasoned opinion. As such, the Advocate General proposes that the Court rule that **France had not complied with the 1991 judgment** by this time.

In relation to the **current situation**, the Advocate General notes that in response to questions put by the Court, the Commission has stated that it is unable to determine as yet whether the new controls have had a real effect. Consequently, in his view, it **cannot be conclusively determined** whether France is currently complying with the Community rules.

In assessing **the consequences of the infringement** by France, the Advocate General also makes a distinction between the two periods of time.

In his opinion, in relation to the **past conduct of France**, between 1991 and 2000, the Court should apply the rules allowing it to fine Member States in such a way so as to not only bring about compliance as soon as possible, but also to have a preventative effect. A daily fine which only commences after the second judgment of the Court would not induce a Member State to end an infringement as soon as it is established by the Court. On the contrary, a Member State could continue to infringe Community law right up to the point where the fine is imposed, thereby undermining Community law. Therefore, **given the persistent, serious, and structural nature of the infringement**, the Advocate General proposes that, for the first time, the Court impose a **lump sum fine of EUR 115,522,500**. To arrive at this figure the Advocate General has taken the daily fine proposed by the Commission and multiplied it by 365 to give the amount payable over a year.

As regards **possible continued infringement**, the Advocate General recognises that the Commission needs further information in order to determine this fact. As monitoring and enforcement practices cannot be changed instantaneously, he considers a daily penalty to be inappropriate. He therefore proposes that the penalty be imposed every six months, this period being sufficient time to establish whether an infringement persists. The Advocate General suggests that the daily fine proposed by the Commission be multiplied by 182.5, to give a **six monthly fine of EUR 57,761,250**.

Reminder: The opinion of the Advocate General does not bind the Court of Justice. The task of the Advocate General is to propose to the Court, in complete independence, a legal solution to the case in question. The Court will now begin its deliberations in this case and the judgment will be delivered at a later date.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: All.

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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